

Office of the Secretary of Defense

§ 250.7

days of the effective date of this Directive. During this 60-day period, requests for technical data governed by this Directive shall be processed in accordance with procedures in effect before the promulgation of this Directive.

(10) Take such other actions that may be required to ensure consistent and appropriate implementation of this Directive within the Department of Defense.

(b) The Under Secretary of Defense for Policy shall:

(1) Develop and promulgate, as required, policy guidance to DoD Components for implementing this Directive.

(2) Develop procedures with the Departments of State and Commerce to ensure referral of export cases involving technical data governed by this Directive to the Department of Defense.

(c) The Assistant Secretary of Defense (Public Affairs) shall:

(1) Monitor the implementation of provisions of this Directive that pertain to DoD 5400.7-R.

(2) Provide such other assistance as may be necessary to ensure compliance with this Directive.

(d) The General Counsel, Department of Defense, shall:

(1) Assist in carrying out the provisions of this Directive by advising DoD Components with respect to the statutory and regulatory requirements governing the export of technical data.

(2) Advise the USDR&E regarding consistent and appropriate implementation of this Directive.

(e) The Heads of DoD Components shall:

(1) As the delegated authority, have the option to redelegate the authority to withhold technical data in accordance with this Directive.

(2) Disseminate and withhold from public disclosure technical data subject to this Directive in a manner consistent with the policies and procedures set forth herein.

(3) Designate a focal point to

(i) Ensure implementation of this Directive;

(ii) Identify classes of technical data the release of which is governed by § 250.5(d)(3) of this part;

(iii) Act on appeals relating to case-by-case denials of technical data;

(iv) Suspend a contractor's qualification pursuant to § 250.(e) of this part;

(v) Receive and evaluate requests for reinstatement of a contractor's qualification; and, when appropriate,

(vi) Recommend disqualification to the OUSDR&E.

(4) Promulgate and effect regulations to implement this Directive within 180 days.

(5) Disseminate technical data governed by this Directive in the manner prescribed herein, to the extent feasible, during the period after which certification procedures have been established under § 250.6(a)(9) of this part, but before DoD Components have issued implementing regulations under paragraph (e)(4) of this section. However, if such dissemination is not feasible, the DoD Component may process requests for such data in accordance with procedures in effect before the promulgation of this Directive.

§ 250.7 Pertinent portions of Export Administration Regulations (EAR).

The following pertinent section of the EAR is provided for the guidance of DoD personnel in determining the releasability technical data under the authority of this part.

EXPORT ADMINISTRATION REGULATIONS 15 CFR 379.3

General License GTDA: Technical Data Available to All Destinations

A General License designated GTDA is hereby established authorizing the export to all destinations of technical data described in § 379.3(a), (b), or (c), below:

(a) *Data Generally Available.* Data that have been made generally available to the public in any form, including

(1) Data released orally or visually at open conferences, lectures, trade show, or other media open to the public; and

(2) Publications that may be purchased without restrictions at a nominal cost, or obtained without costs, or are readily available at libraries open to the public.

The term "nominal cost" as used in § 379.3(a)(2), is intended to reflect realistically only the cost of preparing and distributing the publication and not the intrinsic value of the technical data. If the cost is as much as to prevent the technical data from being generally available to the public, General License GTDA would not be applicable.

(b) *Scientific or Educational Data.* (1) Dissemination of information not directly and significantly related to design, production,

or utilization in industrial processes, including such dissemination by correspondence, attendance at, or participation in, meetings; or

(2) Instruction in academic institutions and academic laboratories, excluding information that involves research under contract related directly and significantly to design, production, or utilization in industrial processes.

(c) *Patent Applications.* Data contained in a patent application, prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office. (No validated export license from the Office of Export Administration is required for data contained in a patent application, or an amendment, modification, supplement, or division thereof for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office 37 CFR part 5. See § 370.10(j).)

§ 250.8 Pertinent portions of International Traffic in Arms Regulations (ITAR).

The following pertinent section of the ITAR is provided for the guidance of DoD personnel in determining the releasability of technical data under the authority of this part.

INTERNATIONAL TRAFFIC IN ARMS REGULATIONS 22 CFR 125.11

General Exemptions

(a) Except as provided in § 26.01, district directors of customs and postal authorities are authorized to permit the export without a license of unclassified technical data as follows:

(1) If it is in published⁴ form and subject to public dissemination by being:

- (i) Sold at newsstands and bookstores;
- (ii) Available by subscription or purchase without restrictions to any person or available without cost to any person;
- (iii) Granted second class mailing privileges by the U.S. Government; or
- (iv) Freely available at public libraries.

(2) If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order

[12356], as amended, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacturing of any arms, ammunition, or implements of war on the U.S. Munitions List.

(3) If the export is in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State in accordance with part 124 of this chapter.

(4) If the export is in furtherance of a contract with an agency of the U.S. Government or a contract between an agency of the U.S. Government and foreign persons, provided the contract calls for the export of relevant unclassified technical data, and such data are being exported only by the prime contractor. Such data shall not disclose the details of development, engineering, design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List. (This exemption does not permit the prime contractor to enter into subsidiary technical assistance or manufacturing license agreements, or any arrangement which calls for the exportation of technical data without compliance with part 124 of this subchapter.)

(5) If it relates to firearms not in excess of caliber .50 and ammunition for such weapons, except technical data containing advanced designs, processes, and manufacturing techniques.

(6) If it consists of technical data, other than design, development, or production information relating to equipment, the export of which has been previously authorized to the same recipient.

(7) If it consists of operations, maintenance and training manuals, and aids relating to equipment, the export of which has been authorized to the same recipient.⁵

(8) If it consists of additional copies of technical data previously approved for export to the same recipient; or if it consists of revised copies of technical data, provided it pertains to the identical Munitions List article, and the revisions are solely editorial and do not add to the content of technology previously approved for export to the same recipient.

(9) If it consists solely of technical data being reexported to the original source of import.

(10) If the export is by the prime contractor in direct support and within the technical and/or product limitations of a “U.S. Government approved project” and the prime contractor so certifies. The Office of Munitions Control, Department of State, will verify, upon request, those projects which are “U.S. Government approved,” and accord an exemption to the applicant who

⁴The burden for obtaining appropriate U.S. Government approval for the publication of technical data falling within the definition in § 125.01, including such data as may be developed under other than U.S. Government contract, is on the person or company seeking publication.

⁵Not applicable to technical data relating to Category VI(d) and Category XVI.